

Public Accountability Committee

NSW Government's Management of the COVID-19 pandemic

Responses to questions taken on notice during hearing on Thursday 21 May 2020

1. Public Health Order

The Hon. ADAM SEARLE: In one of the many press conferences you indicated that at least it was your present intention that the public health orders having a life of 90 days you would not be seeking an extension of them. If this order made on 14 May is a brand new order, would that not have a new 90-day time frame?

Commissioner FULLER: I would have to take advice on it, but my perspective is that police will not be seeking an extension to any of the orders but at the end of the day it will be a matter for government, particularly the health Minister, who I understand [inaudible] orders.

Response:

The NSW Police Force will continue to enforce the Public Health Orders as long as they are in effect. The Public Health Orders fall under the portfolio responsibility of the Minister for Health.

2. Standard Operating Procedures/Fact Sheets on Police Powers

The Hon. ADAM SEARLE: You were indicating you do not know whether standard operating procedures were issued for the public health orders. Can you take that on notice and come back to us?

Commissioner FULLER: I am certain that we issued correspondence to police in relation to how to use the individual powers. What that form was called I am unsure, but we certainly issued training material to police on how to use the powers.

The Hon. ADAM SEARLE: Can we have copies of that correspondence or any documents that might or might not be standardised?

Commissioner FULLER: I am happy to take that on notice, Mr Searle.

Response:

A Fact Sheet setting out information about the Public Health Orders and suggested responses to breaches of the Order was sent to all police officers each time a new Public Health Order was made or amended.

Attached at **TAB A** are copies all Fact Sheets that were sent out via NEMESIS (Police Email) to date.

3. Penalty Infringement Notices

The Hon. ADAM SEARLE: How many of the infringements were directed to individuals and how many to premises or businesses?

Commissioner FULLER: I will take that on notice but the business tickets were a very small percentage of the overall infringements.

The Hon. ADAM SEARLE: Can you give us a sense of what sorts of things those infringements were for?

Response:

As at 21 May 2020, the total number of infringement notices for Failing to Comply with Public Health Orders since 17 March 2020 is as below:

Infringement Type	Prosecuting	Total issued
Individual	1,284	1,344
Corporation	6	6

Of the six (6) infringements issued to businesses, five (5) penalty notices were for failing to cease operations while one (1) was for allowing too many individuals to congregate inside.

Of the Individual infringements, a majority were for Out of Home without Reasonable Excuse and Congregating - more than 2 people.

4. Fines issued in regional areas

The Hon. JOHN GRAHAM: Can you give us some sense of the amount of fines issued in the city versus the country? It did seem that early on, despite the low risk of virus transmission in country New South Wales, that a number of these offences were being registered there early on. Do you have any statistics on that balance or any views on that balance?

Commissioner FULLER: The State is cut up into six regions: three metropolitan and three regional. If you accept that the Western Region is a huge part of the State, I think they received around 140 tickets. The Central Metropolitan Region, which is really the centre of Sydney, received 361. Just based on that—and I am happy to again take it on notice for more detailed information—the Western Region, which by size is more than half the State, received nearly a third of what the city did.

Response:

As at 21 May 2020, approximately 56% of infringement notices were issued in metropolitan areas and 44% in regional areas.

Fines issued in regional areas cont'd

The Hon. ADAM SEARLE: Regarding the fines being issued in the Western Region, can you tell us what kind of behaviours attracted those fines? I know travelling without lawful excuse is often the descriptor, but I wondered whether you had a slightly fuller flavour of the kind of behaviours that were attracting the infringements.

Commissioner FULLER: Most of them would have been out of home without a reasonable excuse—that is, drinking-in-the-park-type offences. There were times that we caught people engaged in, say, dealing drugs or breaking into a house. There is a whole range of reasons. I do not have that list in front of me. In terms of the flavour, we are certainly happy to take on notice for the Western Region 140 to give you some sense of what breaches under the Health Act they were for.

The Hon. ADAM SEARLE: Certainly. Again on notice, if you could provide a sense of, in different parts of the State, including the city, what kind of behaviours were attracting the infringements?

Response:

In the Western Region, 96% of infringement notices were given for either Out of Home without Reasonable Excuse or for Congregating - more than 2 people.

5. Calls received from Crime Stoppers

The Hon. ADAM SEARLE: You mentioned Crime Stoppers being the source of some police attention to individuals. How many calls were made to Crime Stoppers regarding public health order breaches?

Commissioner FULLER: I will take it on notice but it was into the thousands in my understanding. I will take it on notice but I believe it was up near 17,000 calls, which is enormous.

The Hon. ADAM SEARLE: How many of those calls—I am happy for you to take it on notice— resulted in a police attendance at a particular location or to dealing with a particular concern?

Commissioner FULLER: Thank you. Noted.

Response:

Between 17 March and 21 May 2020, there were a total of 21,376 contacts (via phone calls and/or email and website reports) made to Crime Stoppers regarding people breaching the Public Health Orders. The total figure is a combination of Police Computerised Aided Despatch (CAD) jobs (19,031) and Intelligence Reports (2,345), which were all actioned by Police. CAD jobs are created for managing Police in the field. Of those, 17,939 total CAD jobs resulted in attendance by Police.

Please note, the total number of CAD jobs can include multiple jobs to the same location and do not necessarily require police attendance at the premises (i.e. police patrol only).

6. PINs

The Hon. COURTNEY HOUSSOS: Commissioner—and I am happy for you to take this on notice— you mentioned earlier that some individuals were issued with public health infringement notices on top of other charges. Are you able to tell us how many of those were where the infringement notices were given in combination with other charges?

Commissioner FULLER: I will take that on notice. I am sure we can probably find that information.

Response:

72 people who were issued a Public Health Act (PHA) infringement were also issued a court attendance notice for a non-PHA related matter at the same time as the infringement.

7. Fines issued at worksites

The Hon. COURTNEY HOUSSOS: Then if someone on a worksite was unhappy with the social distancing situation, would you consider that you have jurisdiction for that as well?

Commissioner FULLER: We have not been called as far as I know or issued any tickets for worksites, so to be clear I will take that on notice.

Response:

As at 21 May 2020, gatherings for the purposes of work are exempt for the purposes of the Minister's direction about public gatherings. Also, gatherings at an office building, warehouse, construction site, etc that are necessary for the normal operation of the tenants within the building or site are exempt from the 100 person (indoor) and 500 person (outdoor) limits and the 4 square metre rule.

Other Public Health Orders still apply to individuals on worksites – for example, the requirement to self-isolate if the person has been diagnosed with COVID-19. Police could be called to a worksite in those circumstances.

No fines on worksites have been issued to date.

8. Historic record of emergency management

The Hon. ROBERT BORSAK: It is interesting you raise that. Are there any records available from what happened in those times? And if so, what role did police have in those days?

Commissioner FULLER: That it is an interesting one. There was an actual Minister who took on the enforcement role within Cabinet. His surname was Fuller—the irony of it—but he is not related to me as far as I know. This is a true story. There is an org chart and there is some information around people being fined for not wearing masks. The structure is fairly similar. I am happy to provide you that structure on notice.

Response:

This information is publicly available on State Records' website:
<https://www.records.nsw.gov.au/archives/collections-and-research/guides-and-indexes/stories/pneumonic-influenza-1919>

9. Public health order

The CHAIR: Commissioner, this is not a trick question. It is your understanding as the most senior police officer in New South Wales. Do people require a reasonable excuse to be out and about under the public health orders? It is not a trick question. What is your understanding?

Commissioner FULLER: You cannot detach this from gatherings and closures.

The CHAIR: I am asking about the obligation of individuals. It is not a trick question. It is a very simple question. It is a very obvious question. What is your understanding?

Commissioner FULLER: You cannot ask that question in isolation. I will take it on notice and I will give you a legal answer.

Response:

A reasonable excuse is no longer required for a person to leave their home. However, there remain restrictions in relation to the number of persons who can gather together in public places, the number of persons a resident can allow to visit their home etc.

10. Fine issued to 19 year-old

The CHAIR: Commissioner, you would have reviewed the fine that was issued by the police at 9.30 p.m. on Friday 15 May, according to the police media unit, to an individual from Emu Plains, a 19-year-old man, who was issued with a \$1,000 fine by your police on Friday. The reason was that he did not have a reasonable excuse for leaving home. You would have reviewed that. You obviously would have ticked off on that. Yet there was not obligation for him to have a reasonable excuse. How did this happen?

Commissioner FULLER: I will take it on notice.

Response:

A review of the infringement notice was undertaken on 18 May. The infringement was withdrawn on 20 May as it was incorrectly issued due to the change to the Public Health Order that came into effect on 15 May 2020.

11. Public health order

The Hon. JOHN GRAHAM: Minister, you are a Minister of the Crown, you are enforcing with a commissioner of the law of the land—this is pretty confusing for the citizens—if I am leaving home do I need a reasonable excuse or not?

Mr DAVID ELLIOTT: I refer you to the public health orders that the health Minister signed off. Give me a scenario.

The Hon. JOHN GRAHAM: This is not about the content of the health orders, we would direct those questions to the health Minister. You are responsible for enforcing them.

Mr DAVID ELLIOTT: Give me a scenario.

The Hon. JOHN GRAHAM: Do I need a reasonable excuse, or not?

Mr DAVID ELLIOTT: Give me a scenario. If you are leaving home—

The Hon. JOHN GRAHAM: Minister—

Mr DAVID ELLIOTT: Just put it on notice if you are going to interrupt me.

Response:

See answer to Question 9.

12. Fact sheets

THE CHAIR: Commissioner, have you given a very clear direction to the thousands of police across the State who are having the difficult job of enforcing the public health orders that, as of 15 May, people no longer need a reasonable excuse to be leaving their home? Have you given that direction to help police on the ground?

Commissioner FULLER: Yes, it has gone out as a fact sheet in relation to that to all police.

THE CHAIR: When did that fact sheet go out?

Commissioner FULLER: I will take that on notice.

Response:

Yes, an email message was sent to all staff on 15 May 2020. The email expressly stated that “the stay at home direction has been removed”.

A copy of that email is attached at **TAB B**.

13. Fines issued to minors

THE CHAIR: You are not? All right. Commissioner, how many fines have now been issued to people who are aged under 18 for breaches of the public health orders?

Commissioner FULLER: I am happy to take that on notice and let you know. We will definitely have that information.

THE CHAIR: Commissioner, did you review the \$1,000 fine that was issued to the 14-year-old boy I think on 12 May? Did you review that \$1,000 fine?

Commissioner FULLER: I will take that on notice.

Response:

The NSW Police Force advises that as at 21 May 2020, 73 infringements had been issued to 67 young persons under the age of 18 which were related to COVID-19 breaches of Public Health Orders.

Yes, the fine issued on 12 May to the minor was reviewed on 13 May 2020.

14. Fine issued to 14 year-old

THE CHAIR: Is there any evidence that a thousand-dollar fine to a 14 year-old will be at all effective?

Mr DAVID ELLIOTT: I will have to take that on notice.

THE CHAIR: In terms of preventing—

Mr DAVID ELLIOTT: I will have to take that on notice. When I was 14, mowing lawns for a living, if you had hit me with a financial penalty I would think twice about doing something wrong.

Commissioner FULLER: Me too.

THE CHAIR: We will get the full numbers of minors on notice—is that right, Commissioner?

Mr DAVID ELLIOTT: He has already committed to that.

Response:

The *Public Health Act 2010* does not define a person by age in relation to the issuing of a penalty notice. NSW Police Force officers are authorised officers for certain purposes under the Act. One of those powers is issuing a COVID-19 related penalty notice for failure to comply with a Ministerial Direction. It is important to recognise that these powers were provided to police to ensure compliance with the *Public Health Act 2010* and target behaviour that could spread the disease and place members of the community at risk. Police will continue to use their discretion when responding to breaches and will consider each on a case by case basis.

See answer to question 13.

15. Allegations of public health order breaches by Members of Parliament

The Hon. ADAM SEARLE: Commissioner, I think I asked you whether you had personally reviewed the infringement issued to Mr Harwin. I think you said it was part of a batch that you had reviewed. Did you personally review the decision to not issue a fine to the Deputy Premier, Mr Barilaro?

Commissioner FULLER: No, but I was informed that that was the case, that there was insufficient evidence to.

The Hon. ADAM SEARLE: Are you able to tell the Committee what the distinguishing features were between the two scenarios, between Mr Harwin and Mr Barilaro?

Commissioner FULLER: I would have to take it on notice to give a definitive, full answer to that, in fairness.

Response:

Mr Barilaro was interviewed on 7 May 2020 by the NSW Police Force. Mr Barilaro stated that his wife was staying at the farm in Nerriga, which is a rented property for part of the year. The family was staying there and tending to the property and conducting maintenance. Parts of the property had recently received damage from bushfires. The property was not being rented due to COVID-19 restrictions. Mr Barilaro travelled to the property on 2 May 2020 from Sydney staying that evening and then returning to Sydney on the evening of 3 May 2020. Health Ministerial Orders dated 1 May 2020 prescribed this was within the guidelines.

It is understood that Mr Harwin has elected to have the matter determined by the Local Court. It is now a matter before the Courts and it is inappropriate to answer his specific case at this time. The matter is listed for hearing on 20 October 2020.

16. Allegations of public health order breaches by Members of Parliament

The Hon. JOHN GRAHAM: I was intending to ask this question of the Commissioner, although the Minister seems to know a lot about this, so if he knows the answer he is welcome to respond. Commissioner, when you come back, can you just indicate factually to which property we are referring to? Multiple media reports have talked about Dungowan Estate, but that was not the suggestion from the Deputy Premier publicly; he suggested the property was in Nerriga. When you respond, could you just make it clear to which property we are referring?

Commissioner FULLER: Can you tell me which one you are referring to?

The Hon. JOHN GRAHAM: My understanding is the Deputy Premier's comments were about retiring to a property in Nerriga. Multiple media reports have then referred to a property, the Dungowan Estate, which is nearby but not in Nerriga.

Commissioner FULLER: I could almost certainly say it is the same one, but I will take it on notice.

Response:

See answer to question 15.

17. Changes to the State Emergency Operations Controller role in March 2020

Commissioner FULLER: No. It is actually a legislated position that is normally held by a Deputy Commissioner of Police and there is a deputy SEOCON, excuse the acronym, that is an Assistant Commissioner, but for a period of about four weeks a legal instrument was confirmed and the Governor signed off on the New South Wales police commissioner, Mick Fuller, being the SEOCON but that has now been retracted and Deputy Commissioner Gary Worboys is back into that position. On notice, I could give you the exact dates, if required.

Response:

On 29 March 2020, the NSW Police Commissioner Michael Fuller APM was appointed to the role of State Emergency Operations Controller (SEOCON), with Deputy Commissioner Gary Worboys as Deputy SEOCON.

On 6 May 2020, the Deputy Commissioner Gary Worboys, Regional NSW Field Operations resumed the role of SEOCON and Assistant Commissioner Joe Cassar, the role of Deputy SEOCON.

18. Infringements issued for breaches of social exclusion rules

The Hon. ROBERT BORSAK: About 1,200 infringements have been issued for breaches of social exclusion rules to date. Can you give the Committee a breakdown of numbers? I do not recall whether you have already undertaken to take this on notice or not. Can you give the reasons for the fines and the financial penalties imposed?

Mr DAVID ELLIOTT: Who is that to, Robert?

The Hon. ROBERT BORSAK: Sorry, that is to the Commissioner.

Commissioner FULLER: I think that in part I have taken questions on notice about juveniles but I will take a holistic question from you, Mr Borsak, and answer that on notice, if that is okay?

The Hon. ROBERT BORSAK: That is fine. Thank you. Further to that, have any people elected to have penalties reviewed by the New South Wales Civil and Administrative Tribunal [NCAT] or taken it to court?

Commissioner FULLER: Not at this stage. But could I take that on notice as well?

The Hon. ROBERT BORSAK: Yes, please.

Response:

Excluding those penalty notices that have been withdrawn following the Commissioner's review, of the 1,260 infringements issued to individuals up to 21 May 2020, the reasons for issue are as follows:

Congregating - more than two people	309
Cough/Spit	14
Failed to self quarantine	10
Individual fail to cease operations	10
Organisation fail to cease operations	2
Out of home without reasonable excuse	915

All infringements issued to individuals incurred a \$1,000 fine.

Of the six (6) infringements issued to businesses, five (5) penalty notices were for failing to cease operations while one (1) was for allowing too many individuals to congregate inside. These infringements incurred \$5,000 fines.

The NSW Police Force has received notification that there are 20 matters in which the recipient of a penalty notice has elected to take the matter to court. However, no further information has been received if any of the matters have been to court or going before a tribunal.

19. Police Officers who contracted COVID-19

The Hon. ROBERT BORSAK: Yes. Just on an obviously related matter, how many police officers have actually contracted COVID-19 while on the job?

Commissioner FULLER: There were six officers and some administrative staff. Five of the officers contracted it from overseas travel, which I think sort of really does reinforce where we are at the moment around overseas isolation, and the sixth officer got that through community contact, not through the work environment. But I will take that on notice and get that updated for you.

Response:

As at 21 May 2020, no NSW Police Officers have contracted COVID-19 from an on-duty exposure.

20. Allegations of public health order breaches by Members of Parliament

The Hon. ROBERT BORSAK: Could you just quickly or on notice maybe or could I get from you or your office the precise reasons why Mr Barilaro was not fined?

Commissioner FULLER: I think I have already taken that on notice as a previous question.

The Hon. ROBERT BORSAK: Thank you.

Commissioner FULLER: But I acknowledged your question on notice.

The Hon. ROBERT BORSAK: Thank you. I am finished.

The CHAIR: Thanks Mr Borsak. Commissioner, while we are on this thread, can you provide the reasons why Mr Harwin was fined?

Commissioner FULLER: Yes.

The CHAIR: Is that being challenged at the moment, do you know?

Commissioner FULLER: I will take that on notice. I understand that we may have received correspondence but I do not think that was an official process that would happen naturally, so could I take that on notice?

The CHAIR: Yes, thank you, Commissioner.

Response:

See answer to question 15.

21. Social distancing guidelines for police officers

The CHAIR: All right. Commissioner, coming back to you, what are the social distancing guidelines that are in place for police to practise in the course of their work as police?

Commissioner FULLER: Thanks. I will take the answer on notice in terms of providing you the facts sheets that we are sending out.

Response:

The NSW Police Force encourages staff to maintain a positive daily routine in their workplaces to ensure safety of themselves and others and lowering the risk of contracting a virus of any kind.

Staff are advised to avoid close contact, (as defined by the guidelines) and practice physical (social) distancing of at least 1.5 metres. This is not always possible for operational reasons and staff are encouraged to wear personal protective equipment (PPE) in accordance with the general guidelines recommended by NSW Health. This is particularly so when engaging with confirmed, probable, suspect or symptomatic cases of COVID-19. Regular hand hygiene and the appropriate use of PPE in addition to physical distancing where practicable have been successful mitigation strategies.

Various safety messages are circulated daily via a Statewide Nemesis since March 2020, to remind staff of the importance of adhering to NSW Police Force safety advice. All medical related safety advice is vetted by the NSW Police Force Chief Medical Officer and where necessary via the NSW Health Liaison officer in the Police Operations Centre, in conjunction with the Commander Workforce Safety.

Social distancing guidelines for police officers cont'd

The CHAIR: Commissioner, can you provide us on notice with the direction that has been given to police to practise social distancing in all their interactions?

Commissioner FULLER: I will take on notice the work health and safety information that we have provided.

Response:

It is not always possible to maintain social distancing when undertaking policing duties. That said, police for their own safety in general maintain a safe distance when interacting with any member of the public. Reinforcement of key safety messages around social distancing, close contact and hygiene has assisted in ensuring zero on-duty infections.

It should also be noted that other policing jurisdictions including the Australian Federal Police and the United States Federal Bureau of Investigation have sought advice and guidance from the NSW Police Force on the policies and procedures being implemented as these represent the gold standard for policing an unprecedented issue of this magnitude.

22. Personal Protective Equipment (PPE) for frontline officers

The CHAIR: In what circumstances is there a direction that police should use PPE when they are engaging with members of the public?

Commissioner FULLER: I am happy to provide on notice the advice we got from Health in relation to that.

Response:

The NSW Police Force has issued 'COVID-19 Frequently Asked Questions' for the information of staff to assist in education and compliance with the Workplace Health and Safety protocols implemented.

Operational police often face situations where there is a risk of exposure to infectious disease transmitted by bodily fluids. Staff have been asked to refer to the COVID-19 PPE Decision Tree to assist in reducing the risk present of exposure with PPE when interacting with a person suspected or confirmed with COVID-19.

As with most policing situations, constant and dynamic risk assessments are undertaken. It should be noted that based on the medical opinion, expertise and advice of the NSW Police Force's Chief Medical Officer, a police officer should not delay taking operational safety decisions or actions in order to don PPE.